

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

GEORGE GASCÓN • District Attorney
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March 3, 2021

Captain Kent Wegener
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Non-fatal Officer Involved Shooting of Nancy Herrera
J.S.I.D. File #19-0123
L.A.S.D. File #019-04078-2178-057

Dear Captain Wegener:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 14, 2019, non-fatal shooting of Nancy Herrera by Deputy Jonathan Cufley of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

GEORGE GASCÓN
District Attorney

Amy Rutz for
SHANNON PRESBY
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Jonathan Cufley, #[redacted]

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MEMORANDUM

TO: CAPTAIN KENT WEGENER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Non-fatal Officer Involved Shooting of Nancy Herrera
J.S.I.D. File #19-0123
L.A.S.D. File #019-04078-2178-057

DATE: March 3, 2021

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 14, 2019, non-fatal shooting of Nancy Herrera by Los Angeles County Sheriff's Department (LASD) Deputy Jonathan Cufley. We have determined that Deputy Cufley acted in lawful self-defense when he fired his duty weapon.

The District Attorney's Command Center was notified of this shooting on March 15, 2019, at approximately 1:30 a.m. At the time of the notification, investigators did not believe the small lacerations to Herrera's face were caused by gunfire. Therefore, the District Attorney Response Team did not respond to the scene.

The following analysis is based on reports and other materials, including recorded interviews, photographs, surveillance video, and 9-1-1 calls, submitted to this office by LASD Homicide Bureau. No compelled statements were considered in this analysis.

FACTUAL ANALYSIS

On March 14, 2019, at approximately 10:25 p.m., LASD Deputy Mejia was driving a marked police SUV and Cufley was seated in the front passenger seat. Both deputies were dressed in uniform. Mejia and Cufley saw a black Chevrolet SUV driving eastbound on Florence Avenue with paper plates from a Mitsubishi car dealership. Mejia stopped next to the Chevrolet at a red light and tried to get the attention of the driver, Herrera. Herrera avoided eye contact and proceeded eastbound when the light turned green.

Mejia drove behind the Chevrolet and attempted to conduct a traffic stop for a possible violation of a missing rear license plate. The Chevrolet appeared as if it was going to yield but made a right-hand turn travelling southbound on Seville Avenue. Again, it slowed and appeared to yield

but then accelerated at a high rate of speed and failed to stop at a stop sign. The deputies did not pursue the Chevrolet due to public safety concerns.

Soon thereafter, the deputies saw the Chevrolet stopped in the parking lot of a King Taco restaurant. The Chevrolet sped out of the parking lot and travelled northbound on Pacific Boulevard and then eastbound on Flower Street. The deputies followed the Chevrolet and saw it travel southbound on Seville Avenue out of view. When the deputies turned southbound on Seville Avenue, they observed the Chevrolet parked inside a driveway with its taillights on.

Mejia turned into the driveway and Cufley exited the police SUV to approach the driver side of the Chevrolet. Cufley and Mejia simultaneously heard the Chevrolet's engine revving and saw its reverse lights turn on. Mejia heard Cufley yell, "Hey, Sheriff's Department! Stop! Stop! Stop the vehicle!" The Chevrolet simultaneously reversed and turned, causing the front end to swing toward Cufley. Mejia believed Herrera was attempting to run over Cufley.

Cufley stated that the Chevrolet reversed toward him and he believed that the driver was trying to kill him. The patrol car was behind him and a fence to his left, and Cufley believed he could not move to safety. Cufley fired three rounds at the driver side window as he saw the front of the Chevrolet turn and veer toward him. Cufley was next to a wall, and he believed the Chevrolet was going to "take [him] out with the front end or run [his] legs over with the car." Cufley fired an additional three rounds into the driver side window. Cufley believed he fired all the rounds without pause within a few seconds from a distance of approximately three to seven feet.[1] As the Chevrolet continued to travel in reverse, Cufley was concerned that Herrera may attempt to go forward and "smash" into him, but she continued to reverse and crashed into a parked car before driving southbound on Seville Avenue and eastbound on Hope Avenue.

Herrera abandoned the Chevrolet in a driveway a short distance away and fled on foot. Deputies located Herrera nearby hiding under a pickup truck parked in the driveway of a house. They observed several small lacerations to her left cheek and ear. Herrera initially claimed she was injured when she attempted to hide, but the lacerations were consistent with injuries caused by broken glass from the driver side window of the Chevrolet.

[1] Cufley initially believed he had fired a total of four rounds, but he stated he saw six cartridge casings at the scene. In fact, a total of seven cartridge casings were recovered and booked into evidence.



Driver side window of the Chevrolet.



Passenger side damage to the Chevrolet due to crash with the parked car.

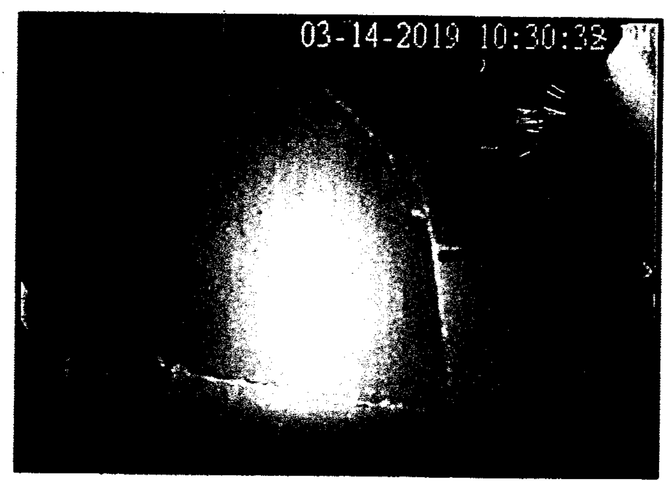


Herrera's injuries.

Video surveillance

Investigators retrieved video surveillance recordings from the house adjoining the driveway where the officer involved shooting occurred. An 11-second video clip showed the front end of a dark car entering the driveway at 10:30:32 p.m. The recording stopped as the car entered the driveway and did not capture the shooting. The car depicted in the video resembled the Chevrolet driven by Herrera.

The owner of the video surveillance system told investigators he did not know why it stopped recording, but that the system was new, and he did not know how to use it. An LASD "Technical Operations Work Sheet" documenting the retrieval of the surveillance footage indicated, "Resident sent files via cellphone. System was cameras to phone capable only[.]"



End of the video recording depicting dark car entering the driveway.

A seven-second video clip from another camera captured Cufley and Mejia walking near the driveway at approximately 10:33 p.m. The video depicted the damaged parked car that was moved into the roadway when the Chevrolet crashed into it after the officer involved shooting.[2] None of the video recordings captured the officer involved shooting.

[2] After the officer involved shooting, Mejia moved the patrol car out of the driveway to secure the scene.



Video surveillance after the officer involved shooting.

Statement of Nancy Herrera

Investigators interviewed Herrera. Initially, she denied being the driver of the Chevrolet but then admitted that she intentionally evaded the deputies. She stated she had been drinking beer earlier in the evening and knew the Chevrolet she was driving was stolen. Before the officer involved shooting, Herrera saw the deputies' SUV behind her. She "reversed" the Chevrolet, "stepped on [the gas pedal]" "all the way down[,]" and the deputy fired multiple shots. Herrera demonstrated how she reversed the Chevrolet to avoid colliding with the patrol car and she "[thought she] hit a car." She was trying to escape and did not intend to hurt any deputy.

LEGAL ANALYSIS

California law permits any person to use deadly force in self-defense or in the defense of others if he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. CALCRIM No. 3470. In protecting himself or another, a person may use that amount of force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent imminent injury. *Id.*

In California, the evaluation of the reasonableness of a police officer's use of deadly force employs a reasonable person acting as a police officer standard, which enables the jury to evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146.

In evaluating whether a police officer's use of deadly force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight… The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

When considering circumstantial, or indirect, evidence to make a conclusion beyond a reasonable doubt, and when one reasonable conclusion points to innocence and another to guilt, the trier of fact must accept the one that points to innocence.[3]

Herrera drove dangerously by speeding and running a stop sign to evade a marked LASD patrol car. According to all accounts, when the deputies attempted to detain Herrera for the third time when she was parked in the driveway on Seville Avenue, Herrera intentionally reversed the Chevrolet by pressing the gas pedal to the floorboard, knowing the patrol car was behind her. Cufley and Mejia heard and saw Herrera reverse at a fast rate of speed.

Herrera told investigators that she was trying to escape. Consistent with her statement, she avoided crashing into Cufley or the police car. However, Herrera's intent, whether to evade or to harm the deputies, is not relevant to the reasonableness of Cufley's perceptions under the rapidly evolving circumstances that lasted only a few seconds. Herrera's actions were reasonably perceived as an assault with the Chevrolet under the circumstances.[4]

Cufley stated he believed Herrera was trying to crash into him. Cufley fired a total of seven rounds at Herrera, which struck the driver side window, to stop the threat he perceived as Herrera reversed the Chevrolet. He did not fire additional rounds as the Chevrolet reversed past him. In her desperate attempt to escape, Herrera's erratic and dangerous driving may have resulted with Herrera crashing into Cufley instead of the parked car. Under the circumstances, Cufley's perception was reasonable and he acted in response to an actual threat despite Herrera's intentions.

CONCLUSION

We conclude that the deadly force utilized by Deputy Jonathan Cufley was legally justified in self-defense. We are closing our file and will take no further action in this matter.

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[3] CALCRIM No. 224; CALCRIM No. 225.

[4] The crime of assault with a deadly weapon is a general intent crime. The crime does not require that the perpetrator intend to hurt someone else. CALCRIM No. 875.